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EXAMINER

MCDERMOTT, CORRINE MARIE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BOSTON SCIENTIFIC CORPORATION

Appeal 2008-0415
Application 10/066,436
Technology Center 3700

Decided: March 27, 2008

Before WILLIAM F. PATE III, RICHARD TORCZON, and SALLY C.
MEDLEY, *Administrative Patent Judges*.

Filed by TORCZON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The subject matter of the claims on appeal relates to a graft assembly for repairing aneurysms. Claims 22-32 stand rejected under 35 U.S.C. § 103 as having been obvious (Ans. at 3). The rejection is AFFIRMED.

THE CLAIMS

Boston Scientific does not offer separate arguments for the rejected claims. Therefore, the claims stand or fall together. We select the independent claim 22 as representative of the claims on appeal. 37 C.F.R. § 41.37(c)(1)(vii). Claim 22 defines the invention as follows (App. Br. at 10):

A graft assembly for repairing aneurysms, comprising:
a graft having a length, a first end and a second end; and
a plurality of unconnected and discrete frames including
a first frame attached to the graft along substantially the length
of the graft, each frame defining a ring and having a plurality of
alternating apices and the first frame being self-expanding.

THE REJECTION

The examiner relies upon the following as evidence in support of the rejections:

Rhodes	US Patent 5,122,154	16 June 1992
Lazarus <i>et al.</i>	US Patent 5,275,622	4 January 1994

Issue

The issue is whether Boston Scientific has shown the examiner erred in rejecting claim 22 as being unpatentable over Rhodes in view of Lazarus.

Findings of Fact

We find the following enumerated facts:

1. The Lazarus reference teaches a graft with springs located at alternating apices (Lazarus, col. 10, ll. 6-8).

2. Lazarus discloses a graft that expands to its expanded position as soon as the graft is free of the delivery capsule (Lazarus, col. 10, ll. 6-10).

3. The Lazarus reference has unconnected and discrete frames located at the ends of the tubular graft (Lazarus, col. 9, ll. 3-5 and Lazarus Fig. 10).

4. Rhodes discloses a graft having a plurality of expandable, ring-like frames located along the graft (Rhodes, col. 5, ll. 62-66).

5. Boston Scientific has not pointed us to any objective evidence of secondary considerations in the record.

Principle of Law

Claim language is to be read in light of the specification as a person of ordinary skill in the art would interpret it. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

In analyzing obviousness, the scope and content of the prior art must be determined, the difference between the prior art and the claim ascertained, and the ordinary level of skill in the art resolved, *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

Section 103 forbids issuance of a patent when the difference between the applicant's subject matter and the prior art would have been obvious at the time the invention was made to a person having ordinary skill in the art, *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007).

OBVIOUSNESS

Boston Scientific argues the combination of Rhodes and Lazarus must have some suggestion or motivation, either in the references themselves or in knowledge generally available to one of ordinary skill in the art, regarding the use of self-expanding grafts. Its second argument is Rhodes teaches away from using these self-expanding grafts (Br. at 6).

To illustrate the fact that all of the claim 22 limitations are in the prior art, we have reproduced Lazarus's Figure 10 below.

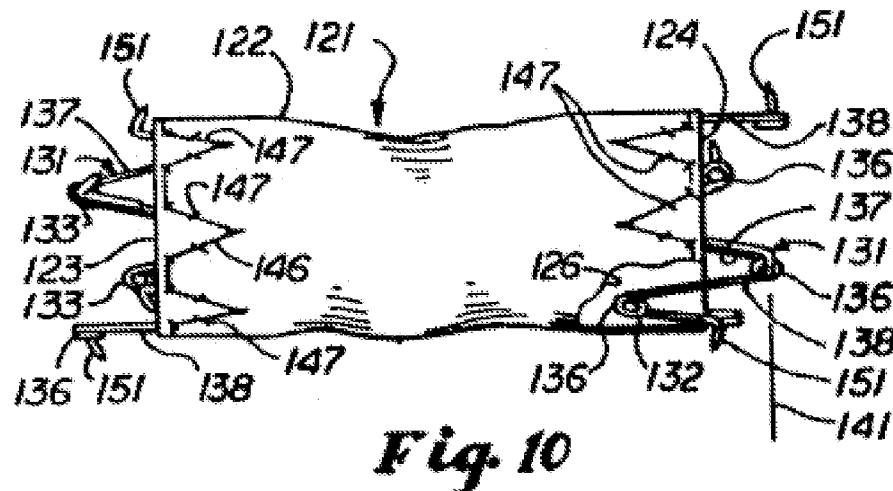


Figure 10 shows a graft 121 with a tubular member 122 and first and second ends 123, 124 with expandable spring means 131 at each end 123, 124.

A graft assembly for repairing aneurysms, comprising:
a graft 121 having a length, a first end 123 and a second end 124; and
a plurality of unconnected and discrete frames 131, 131 including a first frame 131 [either] attached [via sutures 146

and knots **147**] to the graft **121** along substantially the length of the graft **121**, each frame **131**, **131** defining a ring and having a plurality of alternating apices **133** and the first frame **131** being self-expanding [via helical coil springs **136**].

The Lazarus reference discloses all the claim limitations in claim 22 (Findings 1-3). Therefore, it was known at the time of the invention by a person of ordinary skill that grafts can be self-expanding with a plurality of alternating apices. The Rhodes reference strengthens the examiner's position for obviousness because Rhodes teaches a graft having a plurality of expandable, ring-like frames (Finding 4). Boston Scientific is claiming a structure already known in the prior art and has failed to show the examiner erred in rejecting the claims over the prior art. Because we find all the claim limitations are in the prior art, Boston Scientific's teaching-away argument is not persuasive.

CONCLUSION

Boston Scientific has not demonstrated prejudicial error in the rejection of claim 22 when construed as broadly as is reasonable in view of the specification. Since the claims stand or fall together, the obviousness rejection for all pending claims is —

AFFIRMED

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